Office-Supreme Court, U.S.
FILED
JUN 17 1981
ALEXANDER L. STEVAS,
CLERK

No. 80-2140

IN THE

Supreme Court of the United States

OCTOBER TERM 1980

WILLIAM V. GADEK, III,
T/A POOR BILLY'S,

Petitioner,

vs.

TOWNSHIP OF WOODBRIDGE,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF NEW JERSEY

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED FOR REVIEW

1. Whether a Woodbridge Township ordinance limiting the hours of a nonalcoholic discotheque is an unnecessary and improper infringement of First Amendment rights.

2. Whether a Woodbridge Township ordinance designed to prevent the gatherings of young adults at discotheques after 3 A.M. is a denial of young adults' right to equal protection and due process under the Fourteenth and Fifth Amendments and to freedoms of speech and assembly under the First Amendment.

3. Whether the ordinance challenged is an arbitrary and unreasonable exercise of the police power and a violation of petitioner's rights to due process and free speech.

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STATEMENT OF JURISDICTION

This is a case wherein petitioner/plaintiff William V. Gadek, III, challenged on constitutional grounds respondent/defendant Township of Woodbridge's ordinance regulating the hours of operation of his nonalcoholic discotheque, the only one in the Township.

Petitioner prevailed in the Law Division of the Superior Court of New Jersey (Pa14). However, the Appellate Division reversed (Pa1-4). On May 20, 1981, the New Jersey Supreme Court denied certification (Pa13).

Jurisdiction of the United States Supreme Court is conferred by 28 U.S.C. §1257(3).

CONSTITUTIONAL LAWS INVOLVED

AMENDMENT 1—U.S. CONSTITUTION

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

AMENDMENT 5—U.S. CONSTITUTION

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

AMENDMENT 14—U.S. CONSTITUTION

Section 1.

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

28 U.S.C. §1257(3)

Final judgments or decrees rendered by the highest court of a State in which a decision could be had, may be reviewed by the Supreme Court as follows:

(3) By writ of certiorari, where the validity of a treaty or statute of the United States is drawn in question or where the validity of a State statute is drawn in question on the ground of its being repugnant to the Constitution, treaties or laws of the United States, or where any title, right, privilege or immunity is specially set up or claimed under the Constitution, treaties or statutes of, or commission held or authority exercised under, the United States.

STATEMENT OF THE CASE

Facts

The Petitioner, William V. Gadek, trading as Poor Billy's located on U.S. Highway No. 9 and Oakwood

Avenue, in the Township of Woodbridge, is engaged in the business of selling soft drinks and food and providing music and dance to patrons. There are no alcoholic beverages sold on the premises. The hours of operation are from 7:30 P.M. to 10:15 P.M. for teen-agers, ages thirteen to seventeen. There is a one hour closing period and then the business resumes operation for adults only, ages eighteen and above, from midnight to 7:00 A.M. on Friday and Saturday nights and nights preceding major holidays.

Poor Billy's fronts on U.S. Highway 9 and is located in a B-3 Highway Commercial Zone. The Barbary Coast, which is a bar and restaurant, and Gerbers Factory, which is a factory, are located in the same zone on either side of Poor Billy's. The Barbary Coast is open until 2:00 A.M. on weekdays and as late as 3:00 A.M. on Saturdays and the Gerbers Factory is a twenty-four hour operation (Pa7 and Pa15).

On or about March 19, 1980, the Township of Woodbridge through its Council proposed an ordinance purporting to regulate the hours of discotheques in the Township of Woodbridge. On April 2, 1980, the Township voted by a unanimous vote to pass said ordinance, which would take effect on April 22, 1980, or twenty days from April 2, 1980 (Pa27).

The proposed ordinance is divided into three sections and reads as follows:

> *SECTION 1.* Discotheques and other similar business establishments shall herein be regulated as to hours of operation so that said business activities shall terminate at 2:00 A.M. on all days other than Saturdays and Sundays. Discotheques and other similar business operations shall terminate their business activities at 3:00 A.M. on Saturday mornings and 3:00 A.M. on Sunday mornings. Said clos-

ing hours are in conformity with the business hours of bars, taverns, and nightclubs that are licensed to serve alcoholic beverages.

SECTION 2. Discotheques and other similar business operations are herein defined as those businesses that predominantly attract patrons by offering same amplified recorded or live music so that said patrons can dance or listen to same. Ancillary uses may be the providing of food and non-alcoholic beverages. This Ordinance is not intended to regulate the business hours of those establishments that serve alcoholic beverages pursuant to a duly issued liquor license.

SECTION 3. Any person who shall violate any provision of this Ordinance or shall fail to comply with any of the requirements thereof shall, upon conviction thereof, be punished by a fine not exceeding $500.00 or by imprisonment for a term not exceeding 90 days, or both. A separate offense shall be deemed committed on each day during or on which a violation occurs or continues.

The ordinance does not contain within it an explicit statement of purpose. However, in connection with this litigation, the parties stipulated that it was the intention of the defendant Township of Woodbridge to regulate business establishments which cater to teenagers and young adults by providing same with amplified music for their dancing and listening pleasure and to prevent gatherings of young people on discotheque type premises after 3:00 A.M. (Pa6 and Pa15). Inferentially it was also the defendants' purpose to prevent noise emanating from discotheques (Pa10).

Of importance is the fact that the municipal director of health and welfare ran noise level tests on Poor Billy's at the request of Middlesex County Legal Services.

Legal Services was prosecuting a noise complaint for the benefit of one or more adjacent landowners in a residential area near the B-3 Zone. Noise level tests revealed that there was no violation of noise level requirements from Poor Billy's. Moreover, the noise level tests confirmed that the general area has a high ambient or background noise level (Pa7, 10-11 and 15-16).

Woodbridge Township contains only one "Disco" type nightclub as described in the ordinance. That club is Poor Billy's. The municipality does, however, contain numerous all night businesses. These businesses range from factories which are open three shifts, to all-night grocery stores, to the numerous all night diners and restaurants in the area, which are not affected by the ordinance in question (Pa7, Pa11, Pa15).

Contending that he had been singled out for unique treatment, the plaintiff on April 23, 1980, filed with the Law Division of the New Jersey Superior Court a complaint in lieu of prerogative writ contending that the ordinance violated his constitutional rights and that it was an unnecessary, unreasonable, and invalid exercise of the police power (Pa17-20). The Law Division issued interim restraints against enforcement of the ordinance pending resolution of the matter in the trial court (Pa5).

The parties waived oral argument in the Law Division and submitted the matter upon stipulated facts (Pa5 and 15-16).

On July 23, 1980, Judge Keefe of the Law Division issued a written opinion in which he struck down the ordinance as "an unreasonable and arbitrary exercise of the police power" (Pa9). Judge Keefe also indicated that the plaintiff had been singled out for discriminatory adverse treatment, because he catered to "young adults" (Pa11-12). An order striking the ordinance was entered on September 2, 1980 (Pa14). The defendant appealed to

the appellate Division of the New Jersey Superior Court on September 18, 1980 (Pa24).

On March 31, 1981, the Appellate Division reversed the Law Division stating that the ordinance was a valid exercise of the police power to control noise (Pa2-3). The Appellate Division then entered a stay pending plaintiff's application for certification to the New Jersey Supreme Court (Pa25 and Pa26).

The New Jersey Supreme Court denied certification on May 18, 1981 (Pa13), and on June 12, 1981, denied a stay pending plaintiff's petition for writ of certiorari from the United States Supreme Court.

ARGUMENT

The matter *sub judice* presents those "special and important reasons" under U.S. Sup. Ct. Rule 17 which warrant the Court's exercising its discretion in favor of granting the writ of certiorari.

The First Amendment to the United States Constitution protects the people's rights to free speech and peaceable assembly. The Fifth and Fourteenth Amendments protect the people's rights to equal protection and due process. The Township of Woodbridge in enacting the ordinance in question has violated all of these protected rights.

To some extent, of course, these rights are those of Petitioner's patrons. However, it is clear that Mr. Gadek has standing to protect their interests as well as his own under the instant circumstances. *Craig v. Boren*, 429 U.S. 190 (1976); *reh. den.* 429 U.S. 1124.

If one were to take Respondent's avowed purpose of preventing the gatherings of young people on discotheque type premises after 3:00 A.M. and properly reword the text of the ordinance, it would read in Section 2:

> "Discotheques and other similar business operations are herein defined as those businesses that predominantly attract *young people* by offering same amplified recorded or live music so that said *young people* can dance or listen to same. Ancillary uses may be the providing of food and non-alcoholic beverages." (Italicized words were substituted for "patrons" in ordinance.)

As Judge Keefe stated in his opinion:

"There is no legislative finding that gatherings of young adults after 3:00 A.M. presents (sic) any

greater societal problem than gatherings of older adults after that time. In addition there is no reason to believe that such gatherings at discotheques presents (sic) any greater problems than such gatherings at all night diners which are apparently exempt from regulations" (Pa11).

In other words, without finding any particular problem caused by young people, the respondent has chosen to discriminate against them by curtailing their First Amendment rights to assemble and express themselves through dancing. In addition, respondent has distinguished petitioner's business from restaurants and diners by setting up the petitioner's First Amendment privileges of presenting entertainment and allowing dancing as the very criteria for determining that his establishment be regulated while others are not.

It is clear from the recent case of *Schad v. Mt. Ephraim*, ____U.S.____ (No. 79-1640, June 1, 1981), that entertainment and dancing are protected forms of expression under the First Amendment. Any classification which serves to penalize the exercise of a constitutional right, unless shown to be necessary to promote a compelling governmental interest, is unconstitutional. *Shapiro v. Thompson*, 394 U.S. 618, 634 (1969). "Broad prophylactic rules in the area of free expression are suspect." *NAACP v. Button*, 371 U.S. 415, 438 (1963).

Of course, respondent Township of Woodbridge will argue that the ordinance in question is a reasonable "time, place and manner" restriction justified by the Township's desire to prevent noise emanating from discotheques. See Appellate Division opinion in this case at Pa2. However, contrary to the Appellate Division's holding, it is the Township's burden to establish that its interests could not be met by less intrusive measures. *Schad v. Mt. Ephraim*, *supra* (pp. 12 &13 of slip opinion).

The Courts have long held the governmental authority must narrowly tailor ordinances to serve compelling public interests without unnecessarily interfering with First Amendment freedoms. *Schad v. Mt. Ephraim, supra; Dunn v. Blumstein*, 405 U.S. 330, 343 (1972). It is for that reason the Court pointed out in *Schneider v. State*, 308 U.S. 147, 162 (1939) that cities could properly prevent littering by specifically outlawing it rather than banning the distribution of leaflets. By the same token, the Arkansas Supreme Court struck down an ordinance closing all businesses from midnight to 4 A.M. which the town tried to justify as a measure to prevent teenage patronage, horn blowing and traffic noise. The Arkansas Court stated:

> "It is evident that the town's purpose could readily be accomplished by the enactment of an ordinance directly prohibiting the objectionable conduct. There is no need for the town to attain its objective indirectly by closing all places engaged in lawful business after midnight. . . . Here, too, the sweep of the ordinance goes too far beyond the necessities of the situation" *Town of Dyess v. Williams*, 247 Ark. 155, 444 S.W.2d 701 (1969).

In the matter *sub judice*, the Township already has a noise control ordinance with which the petitioner has complied (Pa7, 10-11, 15 & 16). It was this fact which caused Judge Keefe in the Law Division to comment regarding the discotheque ordinance challenged *sub judice*:

> "The subject ordinance, therefore, seeks to achieve without standards what a specific ordinance with standards failed to achieve: an approach that may have utilitarian value but not constitutional support. As pointed out earlier the means used to achieve the ends must be reasonable. If noise gener-

> ated by the business is the essential object of the regulation, the noise ordinance containing objective standards is the apropriate means of enforcement. As stated by one court which addressed this issue one does not pass an ordinance which 'burns the house to roast the pig' " (Pa11).

Despite Judge Keefe's ruling in favor of free speech, assembly and equal protection, despite the established fact that petitioner was not in violation of the noise ordinance, the Appellate Division ruled that the discotheque ordinance was a valid noise control measure (Pa1-4). Thus, the Appellate Division has determined an issue of Federal Constitutional import contrary to the recent United States Supreme Court guidelines in *Schad v. Mt. Ephraim*, *supra*, and contrary to the Arkansas Supreme Court ruling in *Town of Dyess v. Williams*, *supra*. The New Jersey Supreme Court in denying certification has affirmed the Appellate Division's action making the instant case ripe for consideration by the United States Supreme Court pursuant to 28 U.S.C. §1257(3) and U.S. Sup. Ct. Rule 17(b) & (c).

CONCLUSION

Based upon the foregoing, petitioner prays for the issuance of a writ of certiorari so that the United States Supreme Court may review the instant case and reverse the ruling by the New Jersey Supreme Court and the Appellate Division of Superior Court.

Respectfully submitted,

/s/ James B.Smith
JAMES B. SMITH
Attorney for Petitioner

Dated: June 15, 1981

APPENDIX

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
A-4905-79

WILLIAM V. GADEK, III,
t/a POOR BILLY'S,

Plaintiff-Respondent,

v.

TOWNSHIP OF WOODBRIDGE,

Defendant-Appellant.

OPINION OF THE APPELLATE DIVISION

Submitted March 16, 1981—Decided March 31, 1981.

Before Judges Allcorn and Furman.

On appeal from the Superior Court, Law Division, Middlesex County.

Robert F. Dato, attorney for appellant.

A. Kenneth Weiner, attorney for respondent.

PER CURIAM

Defendant township appeals from a judgment striking down as unconstitutional its ordinance fixing closing hours for discotheques of 2 A.M. weekdays and 3 A.M. weekends. The trial judge viewed the ordinance as an overly restrictive and burdensome exercise of the municipal police power.

Discotheques are defined in the ordinance as businesses that "predominantly attract patrons by offering same amplified recorded or live music so that said pa-

trons can dance or listen to same." Ancillary uses may be the providing of food and non-alcoholic beverages. The closing hours are identical to those fixed by ordinance for premises which serve alcoholic beverages.

According to the stipulated facts, plaintiff's discotheque, which is named Poor Billy's, is the single discotheque in the township; it is located in a business zone abutting a residential zone, with several dwelling houses nearby; its hours of operation have been until 7 A.M. on weekends and on nights preceding major holidays, tests by the municipal health department have recorded noise level readings in the vicinity of plaintiff's premises which are not in excess of the permissible volume of decibels established by a municipal noise level ordinance; two individuals living nearby have brought complaints of excessive noise inside and outside plaintiff's premises; a petition was filed in support of the ordinances under challenge.

Defendant argues that the discotheque closing hour ordinance is a constitutional exercise of its police power, reasonably furthering the public health and welfare by safeguarding residential neighborhoods from constant, blaring noise from amplified music in discotheques during the early morning hours.

Municipal ordinances are presumed valid and reasonable. That presumption may be overcome only by a clear showing by the party seeking to strike down the ordinance that it is arbitrary or unreasonable. *Hudson Circle Servicenter, Inc. v. Kearny*, 70 *N.J.* 289, 288-299 (1976). On the record before us, the operation of plaintiff's discotheque increases noise levels affecting nearby dwelling houses; plaintiff has offered no proof that the ordinance under challenge is not justified by the valid legislative purpose of noise control in other areas of the township. We hold that the ordinance under challenge is a proper exercise of the municipal police power.

The recent Supreme Court decision in *Quick Chek Food Stores v. Springfield Tp.*, 83 *N.J.* 438 (1980) is compelling authority. In upholding an ordinance prohibiting business operations from 9 P.M. to 6 A.M. by retail establishments in neighborhood business zones, the Supreme Court stated at 449-50:

> We have no hesitancy in finding that the trial court was justified in holding that limitations upon hours of service in commercial establishments located in a residential milieu is a regulation related to the health, peace and comfort of those surrounding homes. Doubtless such a regulation furthers the public health and welfare of the residential community. We acknowledged in *Berger v. State*, 71 206 (1976), that a municipality may properly endeavor "to secure and maintain 'the blessings of quiet seclusion' and to make available to its inhabitants the refreshment of repose and the tranquillity of solitude." *Id.* at 223; quoting *Village of Belle Terre v. Boraas*, 416 *U.S.* 1, 9, 94 *S. Ct.* 1536, 1541, 39 *L. Ed.* 2d 797, 804 (1974) (per Douglas, J.). See also *State v. Baker*, 81 *N.J.* 99, 106 (1979). Noise created in the still of the night may be disturbing distraction affecting the sleep and rest of people in their homes. The U.S. Department of Housing and Urban Development (HUD) has found "that noise is a major source of environmental pollution which represents a threat to the serenity and quality of life in population centers" and cautioned that "(p)articular attention should be paid to fostering land utilization patterns for housing and other municipal needs that will separate uncontrollable noise sources from residential and other noise-sensitive areas." U.S. Dep't of Housing and Urban Development, Circular No. 1390.2, Noise Abatement and Control 1 (1971). See also *N.J.S.A.* 40:48-1(8) authorizing a municipality to adopt an ordinance to prevent disturbing noise.

It is not an appropriate judicial function for us to question the wisdom of the Township Committee in enacting this ordinance under its general police power authority; nor to determine whether its aim could have been accomplished in some other manner. Plaintiff has failed to meet its burden of clearly demonstrating that the ordinance is arbitrary and unreasonable and does not advance the protection of the residential character of the area adjacent to the N-C zone.

Reversed.

JUDGE JOHN E. KEEFE'S WRITTEN OPINION DATED JULY 23, 1980

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Robert F. Dato, Esq.
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Re: William V. Gadek, III, t/a Poor Billy's v.
Township of Woodbridge
Docket No. L-46075-79

Gentlemen:

This action brought by the plaintiff is in lieu of prerogative writs. *R.* 4:69-1 et seq. On plaintiff's application an Order to Show Cause was issued pursuant to *R.* 4:67-2. Interim restraints were also ordered by the court and have been continued by consent of the parties pending a determination on the merits. On the return day of the Order to Show Cause the attorneys for the parties agreed to enter into a stipulation of facts which will be recited herein to form the basis of the court's opinion. Counsel have also filed Memoranda of Law thoroughly discussing the various issues in the matter. Oral argument was waived. The court was requested to rule on the matter based upon the stipulated facts and submitted memoranda of law.

The issue to be decided is whether an ordinance passed by the Township of Woodbridge purporting to regulate the hours of discotheques in the Township of Woodbridge is invalid on the grounds that it is an arbitrary unreasonable and discriminatory exercise of the municipality's police power. The ordinance which was to take effect on April 22, 1980, reads as follows:

SECTION 1. Discotheques and other similar business establishments shall herein be regulated as to hours of operation so that said business activities shall terminate at 2:00 A.M. on all days other than Saturdays and Sundays. Discotheques and other similar business operations shall terminate their business activities at 3:00 A.M. on Saturday mornings and 3:00 A.M. on Sunday mornings. Said closing hours are in conformity with the business hours of bars, taverns, and nightclubs that are licensed to serve alcoholic beverages.

SECTION 2. Discotheques and other similar business operations are herein defined as those business that predominantly attract patrons by offering same amplified recorded or live music so that said patrons can dance or listen to same. Ancillary uses may be the providing of food and non-alcoholic beverages. This Ordinance is not intended to regulate the business hours of those establishments that serve alcoholic beverages pursuant to a duly issued liquor license.

SECTION 3. Any person who shall violate any provision of this Ordinance or shall fail to comply with any of the requirements thereof shall, upon conviction thereof, be punished by a fine not exceeding $500.00 or by imprisonment for a term not exceeding 90 days, or both. A separate offense shall be deemed committed on each day during or on which a violation occurs or continues.

The parties stipulated that the intention of the governing body was to regulate business establishments which utilize amplified music for dancing or listening pleasure and which catered to teen-agers and young adults. The governing body further intended to prevent gatherings of young people of such premises after 3:00 A.M.

Plaintiff's business is the only business establishment in Woodbridge Township affected by this Ordinance. It is located in a B3 Zone adjacent to a restaurant-lounge known as the Barbary Coast. Both business operations abut Route 9 and are in a high traffic area.

Poor Billy's is open on Fridays and Saturdays and nights preceding major holidays. Teenagers under the age of 18 are permitted in the establishment between the hours of 7:30 and 10:50 P.M. Thereafter the business closes until midnight at which time it reopens and admits adults from the age of 18 and older, remaining open until 7:00 A.M. No alcoholic beverages are sold on the premises.

Prior to the passage of the subject Ordinance, Township records reflected that complaints were lodged against the plaintiff's business establishment from two individuals who live in the immediate vicinity. A petition was also filed in support of the adoption of the Ordinance.

Pursuant to the direction of the Police Department and the Mayor of Woodbridge, the Woodbridge Township Health Department conducted certain noise level readings for the purpose of comparing those readings against the standards of a noise level ordinance previously passed to be within the permissible limits of the ordinance.

The Woodbridge ordinance, as do all municipal ordinances, enjoys a presumption of validity. The plaintiff has the burden of proving that the regulation is unreasonable and arbitrary. *Kozesnik v. Montgomery Township*, 24 N.J. 154 (1957). A municipality possesses power to adopt regulations restricting the hours of operation of a given business. In doing so it is exercising its police power granted to it by the Legislature and Constitution of this State. However, any such restriction in order to be

valid must find justification in reasonableness and necessity. *Dock Watch Hollow Quarry Pit v. Township of Warren*, 142 N.J. Super. 103 (App. Div. 1976). The police power cannot be used arbitrarily, nor can it be used for the benefit of a few individuals. The justification for its use must be found in the public good. Thus, it has been said "that an assertion of the police power, affecting personal and property rights, in nugatory unless made in good faith for the attainment of a public object within its cognizance. If the dominant purpose be the service of private interests under the cloak of the general public good, it must be adjudged a perversion of the power." *New Jersey Good Humor, Inc. v. Bradley Beach*, 124 N.J. L. 162, 169 (E. & A. 1939). And, even though the object of the legislation is arguably based upon public as opposed to private considerations, the means used to reach the desired end must be "reasonably necessary for the accomplishment of the purpose and not unduly oppressive of individuals." *Mr. Softee v. Mayor and Council of Hoboken*, 77 N.J. Super. 354, 367 (Law Div. 1962).

Although Poor Billy's is the only business establishment within the Township to be affected by the ordinance, special or singular treatment is not in and of itself evidence of arbitrary or capricious legislation. Classification is justifiable where it is reasonable and has a just relationship either to the general object of the legislation or to some substantial consideration of public policy or service of the common welfare. Thus, the test is whether the legislative class has a logical and reasonable basis, free of artificiality and arbitrariness, embracing all and omitting none naturally falling into the category. *Auto-Rite Supply Co. v. Mayor and Council of Woodbridge Township*. 41 N.J. Super. 303 (Law Div. 1956).

Applying all of the above principles to the case at hand, the court finds that the ordinance in question must

be invalidated on the grounds that it is an unreasonable and arbitrary exercise of the police power.

Section 1 of the ordinance states an intention to treat discotheques in the same fashion as business serving alcoholic beverages. In this way it attempts to avoid an attack that plaintiff is being singled out or discriminated against. To determine whether the classification is reasonable one must compare the objects and policy considerations supporting regulation of businesses serving alcoholic beverages with the objects and policy considerations of the subject ordinance.

It has long been recognized that the State has a legitimate interest in regulating all aspects of the liquor industry. The Alcoholic Beverage Law, N.J.S.A. 33:1-1 et seq. was enacted to promote temperance and protect the public from the social dangers inherent in the industry. The legislative intent has been judicially recognized and approved as being within the police power of the State. *Matter of C. Schmidt & Sons, Inc.*, 79 N.J. 344 (1979); *Affiliated Distiller Brands Corp. v. Sills*, 56 N.J. 251, 258 (1970). Consistent with this objective, municipal governments were given the power to, among other things, limit the number of licenses permitting such sales, limit the hours between which alcoholic beverages could be sold and prohibit the sale of alcoholic beverages on Sunday. N.J.S.A. 33:1-40. While the constitutional mandates of equal protection and due process are applicable to municipal actions pursuant to the statute, these protections are viewed in the context of the clear legislative intent. As a result the regulatory power in this area has in some instances been characterized as "practically limitless." *Blanck v. Mayor and Council of Magnolia*, 38 N.J. 484, 490 (1962); *Meehan v. Excise Commissioners*, 73 N.J. L. 382, 386 (Sup. Ct. 1906), aff'd 75 N.J. L. 557 (E. & A. 1908).

Because of the perceived inherent susceptibility to social evils, the liquor industry has always been viewed as unique and treated as a subject apart from other business operations. Thus, our highest court has warned that analogies between the law that has developed from the regulation of this industry and other areas of law connot be indiscriminately drawn. *Matter of C. Schmidt & Sons, Inc., supra* at 353.

Therefore to justify the regulation of plaintiff's business on the grounds that it is being treated no worse than businesses subject to alcohol beverage control is at best suspect. Quite simply there is no similarity at all between the nature of the businesses when one considers the legislative objective and public policy justification for the very restrictive regulation of the alcoholic beverage industry. Consequently, Poor Billy's cannot be placed in the same classification as those businesses within Woodbridge Township subject to control under the Alcoholic Beverage Law.

Therefore for the ordinance to be valid it must stand on its own without "bootstrapping" support from businesses serving alcoholic beverages. Thus read, the ordinance singles out for unique treatment only those business operations which offer amplified, recorded or live, music to its customers. One of the inferable legislative objectives of the ordinance is to prevent noise emanating from such businesses late at night, an objective arguably well within the police power. It should be noted that the Township adopted an ordinance at some time prior to the subject ordinance specifically designed to achieve the very same purpose. It apparently contains very specific standards by which compliance can be measured. The noise level readings mentioned earlier were taken pursuant to said ordinance. Plaintiff's business was found to be in compliance. The subject ordinance, therefore, seeks to achieve without standards what a specific ordinance

with standards failed to achieve: an approach that may have utilitarian value but not constitutional support. As pointed out earlier the means used to achieve the ends must be reasonable. If noise generated by the business is the essential object of the regulation, the noise ordinance containing objective standards is the appropriate means of enforcement. As stated by one court which addressed this issue one does not pass an ordinance which "burns the house to roast the pig." *Morrison v. Mayor*, 99 N.J. Super. 365 (Law Div. 1968).

Another legislative goal not found in the ordinance itself but, rather, as a part of the stipulated facts is the desire to "prevent gatherings of young people on such premises after 3:00 A.M." It is not clear from this statement whether the purpose is to protect the regulated group from some undefined evil, or, rather, to protect the general public from some undefined evil emanating from the regulated group. Although one suspects in the context of this case that the latter proposition is the basis for the regulation, it makes little difference since in either event the legislation is fatally defective. There is no legislative finding that gatherings of young adults after 3:00 A.M. presents any greater societal problem than gatherings of older adults after that time. In addition there is no reason to believe that such gatherings at discotheques presents any greater problems than such gatherings at all night diners which are apparently exempt from regulations.

Can one assume, based on this legislative statement, that the ordinance would not apply to Poor Billy's if plaintiff restricted admission after 3:00 A.M. to "old" people, whatever that term may mean? Aside from the problems of defining the class to be regulated, the words of the ordinance would not appear to permit such a distinction. The question is raised not to be contentious

but, rather, to point out the rather inescapable conclusion that this ordinance was designed to single out plaintiff's business for regulation, not for the benefit of the general public but for the private interests of those who oppose plaintiff's operation.

In view of the above findings the Woodbridge Township ordinance in question is declared null and void. Plaintiff's attorney shall submit an Order in conformance with this opinion. Counsel for plaintiff should also make arrangement with the court clerk for return of the stipulated exhibits.

Very truly yours,

/s/ John E. Keefe
JOHN E. KEEFE, J.S.C.

SUPREME COURT OF NEW JERSEY
C-544 SEPTEMBER TERM 1980

WILLIAM V. GADEK, III,
t/a POOR BILLY'S,

Plaintiff-Petitioner,

v.

TOWNSHIP OF WOODBRIDGE,

Defendant-Respondent.

ORDER DENYING CERTIFICATION BY NEW JERSEY SUPREME COURT

Filed May 20, 1981

To the Appellate Division, Superior Court:

A petition for certification of the judgment in A-4905-79 having been submitted to this Court, and the Court having considered the same;

It is ORDERED that the petition for certification is denied with costs.

WITNESS, the Honorable Robert N. Wilentz, Chief Justice, at Trenton, this 18th day of May, 1981.

/s/Stephen Townsend
STEPHEN TOWNSEND
Clerk

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION
MIDDLESEX COUNTY
Docket No. L-46075-79

WILLIAM V. GADEK, III,
t/a POOR BILLY'S,

Plaintiff

v.

TOWNSHIP OF WOODBRIDGE,

Defendant

JUDGMENT ENTERED BY JUDGE KEEFE

THIS MATTER being presented to the Court by A. Kenneth Weiner, attorney for plaintiff, and Robert F. Dato, attorney for defendant, and for good cause shown:

IT IS on this 2nd day of September 1980 ORDERED that the Woodbridge Township ordinance in question is hereby declared null and void.

/s/ John E. Keefe
HON. JOHN E. KEEFE, J.S.C.

STIPULATION OF FACTS

IT IS HEREBY STIPULATED by and between the attorney for the Township of Woodbridge and the attorney for William V. Gadek, III, t/a Poor Billy's the following:

1. That the only business establishment in Woodbridge Township affected by the ordinance which is the subject matter of this litigation is plaintiff's business.

2. That at no time has it been determined by the Health Department of the Township of Woodbridge that noise levels at the plaintiff's business establishment exceeded the maximum permitted by law.

3. That it was the intention of the Municipal Counsel of the Township of Woodbridge to regulate business establishments which cater to teenagers and young adults by providing same with amplified music for their dancing and listening pleasure. It was further the intention of the Counsel to prevent gatherings of young people on discotheque type premises after 3:00A.M.

4. That the operation of plaintiff's business is from the hours of 7:30 P.M. to 10:50 P.M. for teenagers on Fridays and Saturdays only and that the business resumes operation for adults only ages 18 and older from 12:00 A.M. to 7:00 A.M. on only Fridays and Saturdays and on nights preceeding major holidays. Further, there are no alcoholic beverages sold at plaintiff's premises. Further, the plaintiff's business establishment is located in a B3 zone next to a lounge called the Barbary Coast, which is open seven days per week to 2:00 A.M. on weekdays and to 3:00 A.M. on weekends.

5. It has also been established through testimony that the area in which plaintiff's business is located is an area adjacent to Route 9 and next to the Barbary Coast and in a high traffic area.

6. It is also stipulated and agreed that pursuant to the direction of the Police Department and the Mayor of Woodbridge, the Woodbridge Township Health Department conducted certain noise level readings which proved to be under the noise level decibel regulation.

7. According to the records of the Township of Woodbridge, the only complaints lodged against the plaintiff's business establishment came from two individuals who live in the immediate vicinity, and that no other complaints by any citizen in Woodbridge Township have been made concerning plaintiff's business operation except for a certain petition which was filed in the Court in support of adopting and enforcing the ordinance in question.

A. KENNETH WEINER
Attorney for Plaintiff

ROBERT F. DATO
Attorney for Defendant

Dictated but not signed by A. Kenneth Weiner or Robert F. Dato.

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION
MIDDLESEX COUNTY
Docket No. L-46075-79

WILLIAM V. GADEK, III,
t/a POOR BILLY'S

Plaintiff

vs.

TOWNSHIP OF WOODBRIDGE

Defendant

SUPERIOR COURT OF N.J.

COMPLAINT IN LIEU OF PREROGATIVE WRITS
Filed April 23, 1980

Plaintiff, William V. Gadek, III, t/a Poor Billy's residing and doing business at P.O. Box 192, Route 9, Woodbridge, County of Middlesex and State of New Jersey, by way of Complaint against the defendant above says:

FIRST COUNT

1. Plaintiff William V. Gadek, III is the owner of certain property located at P.O. Box 192, Route 9, Woodbridge, New Jersey. Said property consisting of his place of business known as Poor Billy's. Said property is located wholly within the Township of Woodbridge, County of Middlesex and State of New Jersey.

2. On April 21, 1980 the defendant by unanimous vote of the Municipal Council adopted on final reading

"an ordinance to control discotheques and other similar business operations where non-alcoholic beverages are served," known as ordinance number .

3. Said property being wholly within the Township of Woodbridge and lies in a B3 zone.

4. Said ordinance is divided into three sections and states that:

SECTION 1. Discotheques and other similar business establishments shall herein be regulated as to hours of operation so that said business activities shall terminate at 2:00 A.M. on all days other than Saturdays and Sundays. Discotheques and other similar business operations shall terminate their business activities at 3:00 A.M. on Saturday mornings and 3:00 A.M. on Sunday mornings. Said closing hours are in conformity with the business hours of bars, taverns and nightclubs that are licensed to serve alcoholic beverages.

SECTION 2. Discotheques and other similar business operations are herein defined as those businesses that predominantly attract patrons by offering same amplified recorded or live music so that said patrons can dance or listen to same. Ancillary uses may be the providing of food and non-alcoholic beverages. This Ordinance is not intended to regulate the business hours of those establishments that serve alcoholic beverages pursuant to a duly issued liquor license.

SECTION 3. Any person who shall violate any provision of this Ordinance or shall fail to comply with any of the requirements thereof shall, upon conviction thereof, be punished by a fine not exceeding $500.00 or by imprisonment for a term not exceeding 90 days, or both. A separate offense shall be deemed committed on each day during or on which a violation occurs of continues.

5. Said ordinance is arbitrary, capricious and unreasonable and has the affect of making the continued operation and success of the plaintiff's business impossible.

6. Said ordinance is specifically aimed at the plaintiff in an effort to control and modify the plaintiff's business.

WHEREFORE, plaintiff requests judgment that the ordinance cited herein it its entirety be declared invalid.

SECOND COUNT

1. Plaintiff repeats each and every allegation of the First County and makes the same a part hereof as if set forth at length.

2. Defendant's zoning ordinance is unconstitutional as it is an unnecessary use of the municipalities police power.

WHEREFORE, plaintiff requests judgment that the ordinance cited herein in its entirety be declared invalid.

THIRD COUNT

1. Plaintiff repeats each and every allegation of the First and Second Counts and makes the same a part hereof as if set forth at length.

2. Defendant's zoning ordinance is invalid and unreasonable is in direct violation of the equal protection clause of the constitution

WHEREFORE, plaintiff requests judgment that the ordinance cited herein in its entirety be declared invalid.

FOURTH COUNT

1. Plaintiff repeats each and every allegation of First, Second and Third Counts and makes the same a part hereof as if set forth at length.

2. Defendant's zoning ordinance is invalideas it unconstitutionally denies plaintiff his procedural due process rights.

WHEREFORE, plaintiff requests judgment that the ordinance cited herein it its entirety be declared invalid.

FIFTH COUNT

1. Plaintiff repeats each and every allegation of the First, Second, Third and Fourth Counts and makes the same a part hereof as if set forth at length.

2. Defendant's zoning ordinance is invalid as it operates to deny the plaintiff of his duly acquired property rights in the subject property.

WHEREFORE, plaintiff requests judgment that the ordinance cited herein in its entirety be declared invalid.

SIXTH COUNT

1. Plaintiff repeats each and every allegation of the First, Second, Third, Fourth and Fifth Counts and makes the same a part hereof as if set forth at length.

2. Defendant's zoning ordinance is invalid as it is legislation specifically aimed at controling and ultimately destroying plaintiff's vested interest in his property and business.

WHEREFORE, plaintiff requests judgment that the ordinance cited herein in its entirety be declared invalid.

/s/ A. Kenneth Weiner
A. KENNETH WEINER
Attorney for Plaintiff

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION
MIDDLESEX COUNTY
DOCKET NO. L-46075-79

WILLIAM V. GADEK, III,
t/a POOR BILLY'S,
PLAINTIFF,
vs
TOWNSHIP OF WOODBRIDGE,
Defendant.

ANSWER TO COMPLAINT

The defendant, the Township of Woodbridge, County of Middlesex and State of New Jersey by way of Answer to the Complaint, herein says:

FIRST COUNT

1. The defendant admits the allegations contained in Paragraphs 1, 2, 3 and 4 of the Complaint.

2. The defendant denies the allegations contained in Paragraphs 5 and 6 of the Complaint.

WHEREFORE, defendant demands judgment dismissing the plaintiff's Complaint.

SECOND COUNT

1. Defendant repeats each and every answer to the First Count of the Complaint and makes the same a part hereof as if fully set forth at length.

2. The defendant denies the allegations contained in Paragraph 2 of the Second Count of the Complaint.

WHEREFORE, defendant demands judgment dismissing the plaintiff's Complaint.

THIRD COUNT

1. Defendant repeats each and every answer to the First and Second Counts of the Complaint and makes the same a part hereof as if fully set forth at length.

2. The defendant denies the allegations contained in Paragraph 2 of the Third Count of the Complaint.

WHEREFORE, defendant demends judgment dismissing the plaintiff's Complaint.

FOURTH COUNT

1. Defendant repeats each and every answer to the First, Second and Third Counts of the Complaint and makes the same a part hereof as if fully set forth at length.

2. The defendant denies the allegations contained in Paragraph 2 of the Fourth Count of the Complaint.

WHEREFORE, defendant demands judgment dismissing the plaintiff's Complaint.

FIFTH COUNT

1. Defendant repeats each and every answer to the First, Second, Third, and Fourth Counts of the Complaint and makes the same a part hereof as if fully set forth at length.

2. The defendant denies the allegations contained in Paragraph 2 of the Fifth Count of the Complaint.

WHEREFORE, defendant demands judgment dismissing the plaintiff's Complaint.

SIXTH COUNT

1. Defendant repeats each and every answer to the First, Second, Third, Fourth, and Fifth Counts of the

Complaint and makes the same a part hereof as if fully set forth at length.

2. The defendant denies the allegations contained in Paragraph 2 of the Sixth Count of the Complaint.

WHEREFORE, defendant demands judgment dismissing the plaintiff's Complaint.

/s/ Robert F. Dato
ROBERT F. DATO, ESQ.
Attorney for Defendant

I hereby certify that a copy of the within Answer has been served by mail upon all interested parties on June 2, 1980.

/s/ Robert F. Dato
ROBERT F. DATO, ESQ.
Attorney for Defendant

I hereby certify that the foregoing
is a true copy of the original on file
in my office.

/s/
Clerk

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. L-46075-79

WILLIAM V. GADEK, III,
t/a POOR BILLY'S,
Plaintiff-Respondent,

vs

TOWNSHIP OF WOODBRIDGE,
Defendant-Appellant

NOTICE OF APPEAL TO THE APPELLATE DIVISION

Filed August 31, 1980
Rec'd, Appellate Division Sept. 18, 1980

TO: A. Kenneth Weiner,
Attorney for Plaintiff-Respondent
646 Highway 18
East Brunswick, New Jersey 08816

NOTICE is hereby given that the Township of Woodbridge, Defendant-Appellant, appeals to the Superior Court, Appellate Division, from the whole of the final judgment entered by the Superior Court, Law Division, Judge John E. Keefe, sitting below in the above entitled action in favor of William V. Gadek, III, t/a Poor Billy's, Plaintiff-Respondent, being the only other party in this action and appeal, on July 23, 1980. This appeal is not entitled to a hearing preference.

/s/ Robert F. Dato
ROBERT F. DATO, ESQ.
Municipal Counselor
Attorney for Defendant
Appellant

Dated August 19, 1980

NOTICE OF APPLICATION FOR CERTIFICATION TO THE NEW JERSEY SUPREME COURT

(Filed April 6, 1981)

Notice is hereby given that the plaintiff William V. Gadek, III t/a Poor Billy's will petition the Supreme Court of New Jersey for certification to the Appellate Division to review the final judgment of the Appellate Division entered in favor of the defendant in this action on March 31, 1981.

/s/ A. Kenneth Weiner
A. KENNETH WEINER
Attorney for Plaintiff

Dated: April 2, 1981

I hereby certify that the foregoing
is a true copy of the original on file
in my office

/s/ Elizabeth McLaughlin
Clerk

EMERGENT STAY PENDING CERTIFICATION BY NEW JERSEY SUPREME COURT

Moving Papers Filed - April 3, 1981
Answering Papers Filed
Date Submitted to Court - April 3, 1981
Date Argued
Date Decided - April 3, 1981

ORDER

This matter having been duly presented to the court, it is hereby Ordered as follows:
Motion for emergent stay - Granted

FOR THE COURT:

/s/David D. Furman, J.A.D. T/A
DAVID D. FURMAN,
J.S.T/A.D.

Witness, The Honorable David D. Furman, J.S.C.t/a, Judge of Part F, Superior Court of New Jersey, Appellate Division, this 3 day of April 1981.

/s/Elizabeth McLaughlin
Clerk of the Appellate Division

WOODBRIDGE TOWNSHIP ORDINANCE REGULATING DISCOTHEQUES

AN ORDINANCE REGULATING THE OPERATIONAL HOURS OF DISCOTHEQUES AND OTHER SIMILAR BUSINESS OPERATIONS WHERE NON-ALCOHOLIC BEVERAGES ARE SERVED.

BE IT ORDAINED BY THE MUNICIPAL COUNCIL OF THE TOWNSHIP OF WOODBRIDGE AS FOLLOWS:

SECTION 1. Discotheques and other similar business establishments shall herein be regulated as to hours of operation so that said business activities shall terminate at 2:00 A.M. on all days other than Saturdays and Sundays. Discotheques and other similar business operations shall terminate their business activities at 3:00 A.M. on Saturday mornings and 3:00 A.M. on Sunday mornings. Said closing hours are in conformity with the business hours of bars, taverns, and nightclubs that are licensed to serve alcoholic beverages.

SECTION 2. Discotheques and other similar business operations are herein defined as those businesses that predominantly attract patrons by offering same amplified recorded or live music so that said patrons can dance or listen to same. Ancillary uses may be the providing of food and non-alcoholic beverages. This Ordinance is not intended to regulate the business hours of those establishments that serve alcoholic beverages pursuant to a duly issued liquor license.

SECTION 3. Any person who shall violate any provision of this Ordinance or shall fail to comply with any of the requirements thereof shall, upon conviction thereof, by punished by a fine not exceeding $500.00 or by imprisonment for a term not exceeding 90 days, or both. A separate offense shall be deemed committed on

each day during or on which a violation occurs or continues.

ADOPTED:

I hereby certify that the above is a true and exact copy of the Ordinance adopted by the Municipal Council of the Township of Woodbridge at their Regular Meeting held on April 2, 1980.

JOSEPH V. VALENTI
Municipal Clerk